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IMPOSSIBLE FOODS INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IMPOSSIBLE FOODS INC., a Delaware
corporation,

Plaintiff/Counter-Defendant

v.

IMPOSSIBLE LLC, a Texas limited liability
company, and JOEL RUNYON,

Defendants/Counter-Plaintiffs.

Case No. 5:21-cv-02419-BLF (SVK)

THIRD AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

Judge: Hon. Beth Labson Freeman

Plaintiff Impossible Foods Inc. ("Impossible Foods") brings this Third Amended Complaint against defendants Impossible LLC and Joel Runyon and alleges, on personal knowledge as to its own actions and on information and belief as to the actions of others, as follows:

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THE PARTIES

1. Plaintiff Impossible Foods is a Delaware corporation with its principal place of business at 400 Saginaw Drive, Redwood City, California. Impossible Foods develops and distributes plant-based substitutes for meat products.

2. Impossible LLC (“ILLC”) is a Texas limited liability company with a principal place of business at 402 West Johanna St., Austin, Texas 78704. On January 1, 2021, ILLC merged with Impossible X LLC, an Illinois limited liability company with its principal place of business at 1231 Champion Forest Court, Wheaton, Illinois 60187 (“XLLC”). As a consequence of that merger, ILLC acquired, among other things, any trademark rights owned by XLLC, as well as any liabilities. ILLC, and its predecessors in interest, including XLLC, are collectively referred to as “Company Defendant.”

3. On information and belief, ILLC is solely owned and operated by XLLC founder Joel Runyon, and has no other members, employees, or outside investors, and no manufacturing or production facilities. On information and belief, Mr. Runyon resides in Austin, Texas and maintains an address at 402 West Johanna St., Austin, Texas 78704. Joel Runyon and Company Defendant are collectively referred to as “Defendants.”

4. ILLC states that its mission is to help consumers “push their limits and do something impossible.” ILLC offers motivational blog and video content and information relating to exercise and fitness through its multiple websites, in addition to a small offering of apparel. ILLC also claims to offer search engine optimization (“SEO”) services and marketing consulting in the field of social media. Impossible Foods recently learned that ILLC also offers sleep and energy powders and that, upon information and belief, ILLC will offer for sale additional edible products bearing IMPOSSIBLE branding.

5. Impossible Foods brings this action to protect its valuable and well-known IMPOSSIBLE marks against threats and overt opposition by Defendants. Impossible Foods currently owns federally-registered trademark rights in numerous IMPOSSIBLE-formative marks, including:

MARK	REG. NO.	DATE OF FIRST USE	FILING DATE/ REG. DATE	GOODS AND SERVICES
IMPOSSIBLE	5459255	Oct 29, 2015	Oct 25, 2013 / May 1, 2018	Substitutes for foods made from animals or animal products, namely, vegetable-based burger patties; meat substitutes
IMPOSSIBLE™	7179385	Oct 29, 2015	Apr 19, 2022 / Oct 3, 2023	Meat substitutes; plant-based meat substitutes; plant-based meat patties; vegan and vegetarian meat substitutes; plant-based chicken substitutes; poultry substitutes; plant-based poultry substitutes
IMPOSSIBLE	98042164	Oct 29, 2015	Jun 14, 2023 / May 28, 2024	Meat substitutes; plant-based meat substitutes; vegan and vegetarian meat substitutes; plant-based meat patties; plant-based ground meat; chicken substitutes; poultry substitutes; pork substitutes; plant-based meatballs; plant-based sausage; prepared meals consisting primarily of plant-based meat; frozen meals consisting primarily of plant-based meat
IMPOSSIBLE BURGER	6211591	July 2016	May 16, 2018 / Dec. 1, 2020	Substitutes for food, namely, plant-based meat substitutes
IMPOSSIBLE	7249916	Oct 12, 2016	May 13, 2021 / Dec. 19, 2023	Restaurant services; café services, cafeterias, snack bar services, and the provision of food in restaurants and cafes; catering services for meals

MARK	REG. NO.	DATE OF FIRST USE	FILING DATE/ REG. DATE	GOODS AND SERVICES
IMPOSSIBLE	5370337	Nov 3, 2016	May 20, 2014 / Jan 2, 2018	Providing food and drink via mobile truck; catering services

True and correct copies of Impossible Foods's Certificates of Registration for its IMPOSSIBLE-formative marks are attached collectively as Exhibit A. The registrations in the foregoing table are collectively referred to as "Plaintiff's Registrations," and the marks underlying those registrations are collectively referred to as "Plaintiff's Marks."

6. Over almost a decade, Impossible Foods has invested millions of dollars in building and promoting its IMPOSSIBLE trademarks. Impossible Foods's IMPOSSIBLE-branded products are widely available at restaurants and grocery retailers across the United States.

7. Company Defendant nonetheless has (1) asserted that it has superior rights based on its purported use of an IMPOSSIBLE mark for, inter alia, search engine optimization and clothing; (2) accused Impossible Foods of trademark infringement; and (3) initiated a proceeding at the United States Patent and Trademark Office ("USPTO") opposing Impossible Foods's federal trademark application for the mark IMPOSSIBLE for: "Providing information about recipes, ingredients and cooking information; providing an online computer database to consumers featuring information about recipes, ingredients and cooking information."

8. Accordingly, Impossible Foods seeks a declaration that its use and registration of the trademark IMPOSSIBLE in connection with recipes, food ingredients, and cooking information do not, and will not, infringe upon, or otherwise violate any of Company Defendant's valid trademark rights.

9. Impossible Foods also asserts claims for trademark infringement and unfair competition under federal and state law against Defendants in connection with Defendants' use of the IMPOSSIBLE mark in connection with sleep and energy powders and other edible products — goods over which Impossible Foods enjoys priority in the mark IMPOSSIBLE.

10. Impossible Foods further seeks cancellation of several of Defendants' registered IMPOSSIBLE-formative marks on the grounds that their incontestability or registration status was procured through fraudulent means; that the applications of the subject registrations were *void ab initio* due to fraud and/or non-use; and that Defendants have abandoned the marks in connection with some or all of the goods identified in the subject registrations.

JURISDICTION AND VENUE

11. This court has subject matter jurisdiction over the claim for declaratory relief under 28 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act) and 15 U.S.C. § 1051 et seq., as well as under 28 U.S.C. §§ 1331 and 1338, because Impossible Foods brings the action to determine a question of actual controversy between the parties arising under the trademark laws of the United States. This court also has subject matter jurisdiction over Impossible Foods's trademark infringement and unfair competition claims pursuant to 28 U.S.C. §§ 1338 and 1367.

12. Impossible Foods's claims for relief arise directly from Defendants' contacts with California, including its demands and threats made to Impossible Foods in California. (*See Impossible Inc. v. Impossible X LLC*, 80 F.4th 1079, 1087 (9th Cir. 2023).) Further, Company Defendant has challenged the right of Impossible Foods, a California-based company, to provide services under its IMPOSSIBLE trademark to California consumers and nationally.

13. This court also has personal jurisdiction over Defendants because, upon information and belief, Defendants have knowingly and purposefully marketed, distributed, offered for sale, and sold the Accused Products to persons within the State of California; Defendants regularly transact and conduct business within the State of California; and Defendants have otherwise made or established contacts within the State of California sufficient to permit the exercise of personal jurisdiction.

14. This court also has personal jurisdiction over Joel Runyon because Mr. Runyon: (a) is the sole member and sole employee of ILLC; (b) personally participated, authorized, and directed ILLC to market, distribute, offer for sale, and sell goods that infringe Impossible Foods's trademarks in connection with the Accused Products within the State of California; (c) regularly

1 transacts and conducts business within the State of California; and (d) has otherwise made or
2 established contacts with the State of California sufficient to permit the exercise of personal
3 jurisdiction. At all relevant times, Mr. Runyon personally was aware of, directed, and participated
4 in the unlawful conduct of Company Defendant alleged in this pleading.

5 15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a
6 substantial part of the events giving rise to this complaint occurred in this judicial district.

7 **INTRA-DISTRICT ASSIGNMENT**

8 16. This is an Intellectual Property Action and thus may be assigned to a division of the
9 Court on a district-wide basis.

10 **BACKGROUND**

11 **The IMPOSSIBLE Brand**

12 17. Impossible Foods is a pioneer in the field of plant-based substitutes for meat
13 products. The company's aim is to give people the taste and nutritional benefits of meat without
14 the negative health and environmental impacts associated with products from livestock.

15 18. Impossible Foods has enjoyed extraordinary commercial success in the United
16 States. The company's signature products—the IMPOSSIBLE BURGER and other plant-based
17 IMPOSSIBLE meat substitutes—are widely available in grocery stores across the United States,
18 including Albertsons, Kroger, Safeway, Walmart, Target, Wegmans, Costco, and Trader Joe's.
19 IMPOSSIBLE-branded products are sold at thousands of restaurants, including Burger King
20 (Impossible Whopper), White Castle, Red Robin, Starbucks, Hard Rock Café, Cheesecake
21 Factory, and Applebee's. Impossible Foods's products are also available at numerous
22 independent, high-end restaurants.

23 19. Since its inception, Impossible Foods's IMPOSSIBLE mark has received
24 considerable publicity. The mark has been featured in prominent national news coverage,
25 including in The New York Times, The Los Angeles Times, The Wall Street Journal, the Chicago
26 Tribune, San Jose Mercury News, San Francisco Chronicle, Bloomberg, Reuters, FORTUNE,

1 Forbes, Time, and USA Today, as well as on CNN, MSNBC, NPR, Fox Business, and other cable
2 networks.

3 20. Since at least as early as 2015, Impossible Foods has continuously used the mark
4 IMPOSSIBLE in connection with edible products.

5 21. Impossible Foods began using the IMPOSSIBLE mark with edible products prior
6 to any trademark use by ILLC and XLLC for edible products.

7 22. Impossible Foods's IMPOSSIBLE marks are arbitrary and enjoy a high degree of
8 commercial strength because Impossible Foods has used the marks regularly and continuously
9 since October of 2015 for plant-based substitutes for meat products, restaurant services, recipes,
10 ingredients, and cooking information, and other related goods and services.

11 23. As a result of the commercial success of Impossible Foods' products, the
12 IMPOSSIBLE mark has become well-known, including in California—especially in connection
13 with meat substitutes.

14 24. Impossible Foods intends to continue using its IMPOSSIBLE marks in connection
15 with its goods and services, including those related to recipes, food ingredients, and cooking
16 information.

17 **Company Defendant's Assertion of Purported Trademark Rights and an Infringement**
18 **Claim Relating to Recipes, Food Ingredients, and Cooking Information**

19 25. More than five years after Impossible Foods commenced use of its IMPOSSIBLE
20 marks, XLLC sent a demand letter to Impossible Foods. XLLC's letter accused Impossible Foods
21 of "encroachment into spaces either occupied by or closely related to goods and services offered
22 by [XLLC]," which it said "greatly increases the likelihood of confusion." XLLC also referenced,
23 without providing details, "several apparent instances of actual confusion."

24 26. XLLC's letter demanded that Impossible Foods "cease all use of its confusingly
25 similar IMPOSSIBLE designs (that is, uses without 'FOODS' in stylizations that mimic [XLLC's]
26 marks) and limit the use of its IMPOSSIBLE mark to only use in association with plant-based
27 food substitutes."

1 27. On November 25, 2020, XLLC filed a Notice of Opposition with the Trademark
2 Trial and Appeal Board opposing Impossible Foods’s trademark application for the mark
3 IMPOSSIBLE (Serial No. 88/855875), which covers: “Providing information about recipes,
4 ingredients and cooking information; providing an online computer database to consumers
5 featuring information about recipes, ingredients and cooking information.” A true and correct copy
6 of the disputed trademark application is attached as Exhibit B, and a true and correct copy of the
7 Notice of Opposition filed by Impossible X is attached as Exhibit C.

8 28. In its Notice of Opposition, XLLC alleges without citing to any evidence that it
9 “has used its IMPOSSIBLE Marks in association with nutrition, food, and cooking resources since
10 2010 including publication of guides to different foods, ingredients, diets, and recipes.” *See*
11 Exhibit C.

12 29. In its Notice of Opposition, XLLC alleges ownership of 10 trademark registrations
13 and 1 pending application. None of the USPTO filings submitted in connection with those marks
14 shows use in connection with food or cooking. *See* Exhibit C.

15 30. In its Notice of Opposition, XLLC also alleges:
16 • That Impossible Foods lacks “any constructive or actual right” in the
17 IMPOSSIBLE trademark;
18 • That “[t]here is no issue of priority.”; and
19 • That registration of Impossible Foods’ IMPOSSIBLE trademark in connection
20 with the applied-for services “would result in irreparable damage to Impossible
21 X as consumers would be likely to consider the services offered under the
22 registered mark as emanating from Impossible X, and purchase such services,
23 resulting in a loss to Impossible X.”

24 *See* Exhibit C.

25 31. To the extent Company Defendant used an IMPOSSIBLE mark in connection with
26 recipes, food ingredients, or cooking information prior to 2016, that use was sporadic and de
27 minimis, at best, and not the required bona fide use in commerce, and not trademark use. Notably,
28 the three websites that appear to be the core of Company Defendant’s web presence,
<impossiblex.com>, <impossiblehq.com>, and <impossible.co>, did not offer any products or

1 services related to recipes, food or cooking until 2017 at the earliest. Company Defendant
2 therefore does not own protectable trademark rights in any IMPOSSIBLE-formative mark for
3 recipes, food ingredients, or cooking information, and any use post-dates Impossible Foods's
4 trademark rights.

5 32. The goods and services that Impossible Foods has continuously provided under its
6 IMPOSSIBLE marks since 2015 or earlier are not similar to any goods and services Company
7 Defendant actually offered under its marks prior to 2016 and are not likely to create confusion
8 among consumers.

9 33. The consuming public does not associate Company Defendant's IMPOSSIBLE-
10 formative marks with recipes, food ingredients, or cooking information because Defendant has no
11 history of providing such goods and services under IMPOSSIBLE-formative marks.

12 34. Because of the goods and services on which Company Defendant allegedly has
13 made use, and the ways in which it allegedly has (and has not) made use, Company Defendant's
14 IMPOSSIBLE-formative marks are conceptually and commercially weak.

15 **Defendants Are Infringing and Unfairly Competing With Impossible Foods's IMPOSSIBLE**
16 **Marks**

17 35. Impossible Foods has been using its IMPOSSIBLE marks in connection with edible
18 products since at least 2015 and has owned strong common law trademark rights in those marks
19 since at least 2015. Impossible Foods also owns federal trademark registrations for its
20 IMPOSSIBLE marks in connection with edible products and related goods and services.

21 36. Notwithstanding Impossible Foods's prior use and superior rights in the
22 IMPOSSIBLE marks in connection with edible products, Defendants are using, at the direction of
23 Mr. Runyon, IMPOSSIBLE-formative marks in connection with edible products such as sleep and
24 energy powders, as shown below, and upon information and belief, intends to offer for sale
25 additional edible products soon (the "Accused Products").







impossiblehq
and
joelrunyon
Original audio

impossiblehq Im
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112w



99 likes

37. Defendants' use of IMPOSSIBLE-formative marks in connection with the Accused Products are similar to, and compete with, the edible products offered and sold by Impossible Foods.

38. On information and belief, Defendants knowingly, willfully, and intentionally adopted and used IMPOSSIBLE-formative marks in connection with the Accused Products, at the direction of Mr. Runyon, likely causing consumer confusion with Impossible Foods.

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39. On information and belief, the Accused Products are marketed through overlapping channels, including social media, and offered through overlapping channels of trade, including online.

40. Defendants' use of IMPOSSIBLE-formative marks in connection with the Accused Products is not authorized by Impossible Foods and, on information and belief, is likely to cause consumers to mistakenly associate Defendants and the Accused Products with Impossible Foods.

41. On information and belief, Defendants' use of IMPOSSIBLE-formative marks in connection with the Accused Products is likely to cause consumers to believe, mistakenly, that Impossible Foods offered, authorized, or approved the Accused Products.

Defendants' Fraudulent Statements in a Section 15 Declaration

42. On July 26, 2016, XLLC, at the direction of Mr. Runyon, the sole owner and operator of ILLC and its predecessor XLLC, filed an intent-to-use application (Serial No. 87116501) for the mark IMPOSSIBLE NUTRITION & Design shown below in connection with, *inter alia*, “nutritional supplements” in Class 5:

IMPOSSIBLE NUTRITION

See Exhibit D.

43. On March 7, 2017, the USPTO issued a notice of allowance for XLCC's application for the above mark. *See* Exhibit E.

44. On November 16, 2017, XLLC, at the direction of Mr. Runyon, filed a Statement of Use (“SOU”) for the application for the above mark, claiming a first-use date of August 15, 2017 in connection with “nutritional supplements.” *See* Exhibit F at 2.

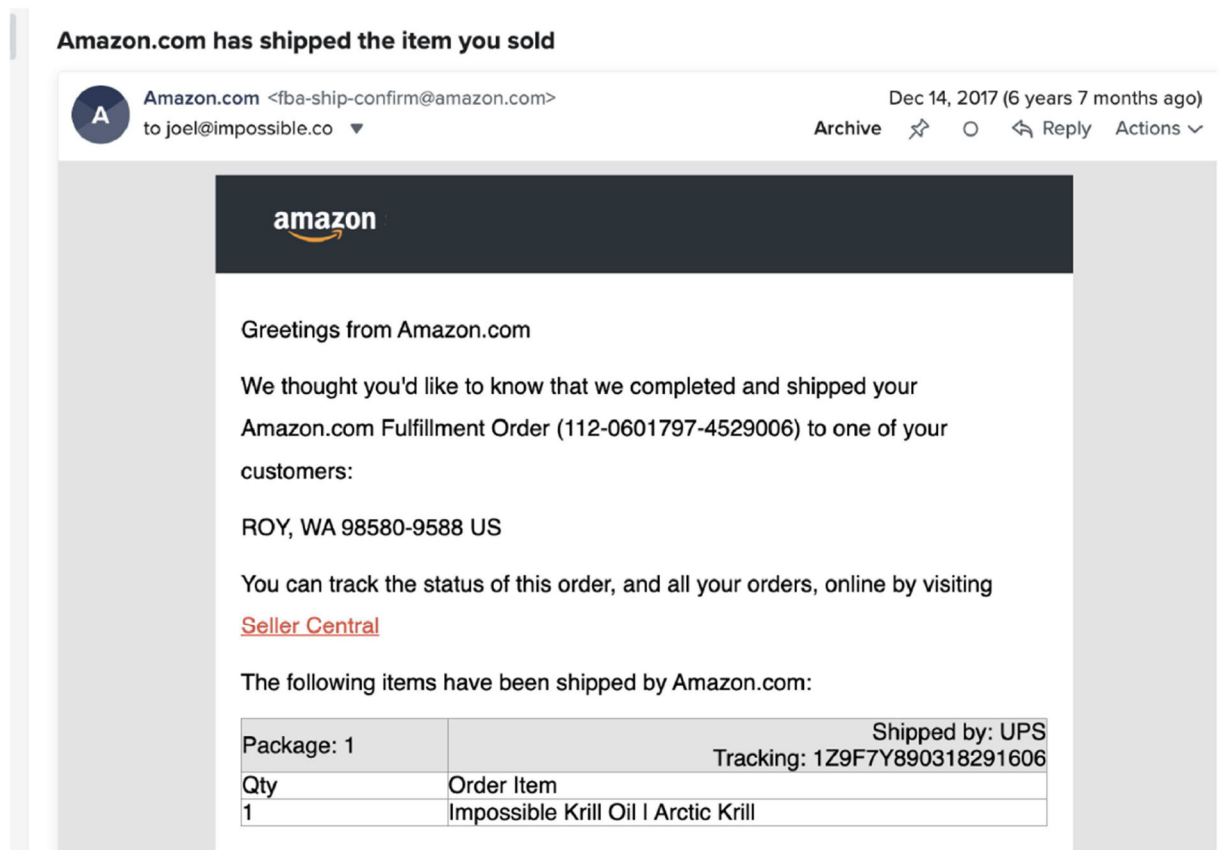
45. On the same day, November 16, 2017, XLLC, at the direction of Mr. Runyon, filed an amended drawing for the mark, which is shown below and ultimately matured to registration (“IMPOSSIBLE NUTRITION Design Mark”):

IMPOSSIBLE NUTRITION

See Exhibit G.

46. On January 23, 2018, the IMPOSSIBLE NUTRITION Design Mark matured to registration, Registration No. 5387588. See Exhibit H.

47. On information and belief, XLLC did not begin offering for sale nutritional supplements in connection with the IMPOSSIBLE NUTRITION Design Mark on a third-party website until on or around December 14, 2017:



Confidential

IMP00004189

See Exhibit I.

48. On September 16, 2022, ILLC, at the direction of Mr. Runyon, instructed the third-party website to remove the krill oil products:

Removal Order Details

Rate this page

Removal order ID: 220916UMX

Order Type: Disposal

Order source : Seller-initiated Manual Removal

Date Submitted: September 16, 2022 at 11:03:07 AM GMT-5

Status: Completed

Ordered: 1

Disposed: 1

Cancelled: 0

Pending: 0

All items for order: 220916UMX

Product Details

Ordered

Disposed

Cancelled

Pending

IMPOSSIBLE Krill Oil | Arctic Krill Omega 3s with EPA, DHA (30 Count)

Merchant SKU: 4L-HGSD-B799

FNSKU: B071G3QB72

ASIN: B071G3QB72

Order item ID: 220916UMX_0

Disposition: Sellable

Condition: New

EAN: 0652012233671

UPC: 652012233671

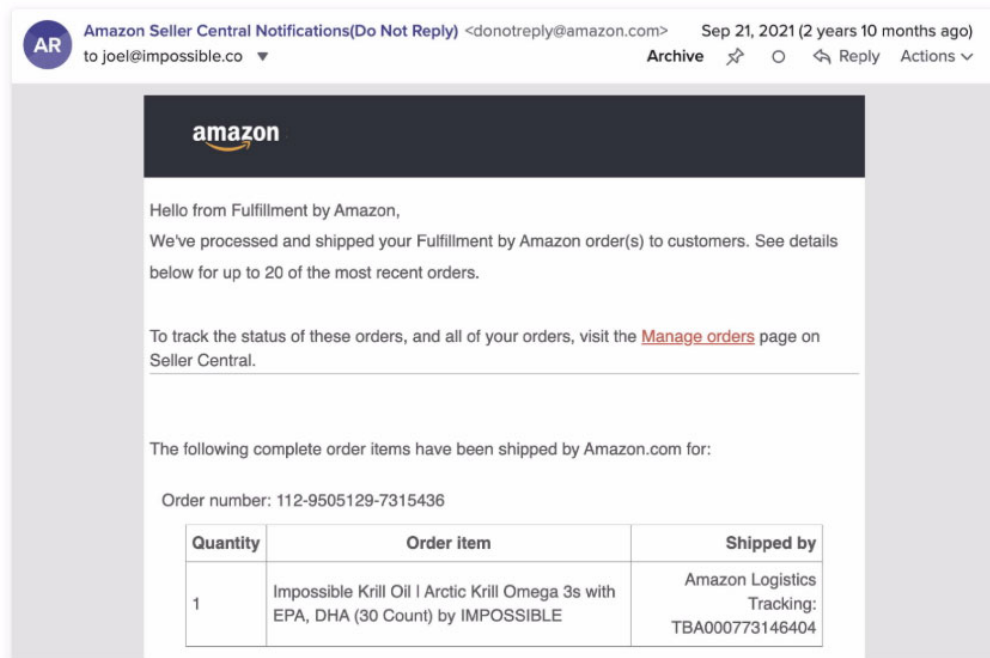
1

Highly Confidential

IMP00004219

See Exhibit J.

49. On information and belief, ILLC's last sale of nutritional supplements in connection with the IMPOSSIBLE NUTRITION Design Mark was on September 21, 2021:

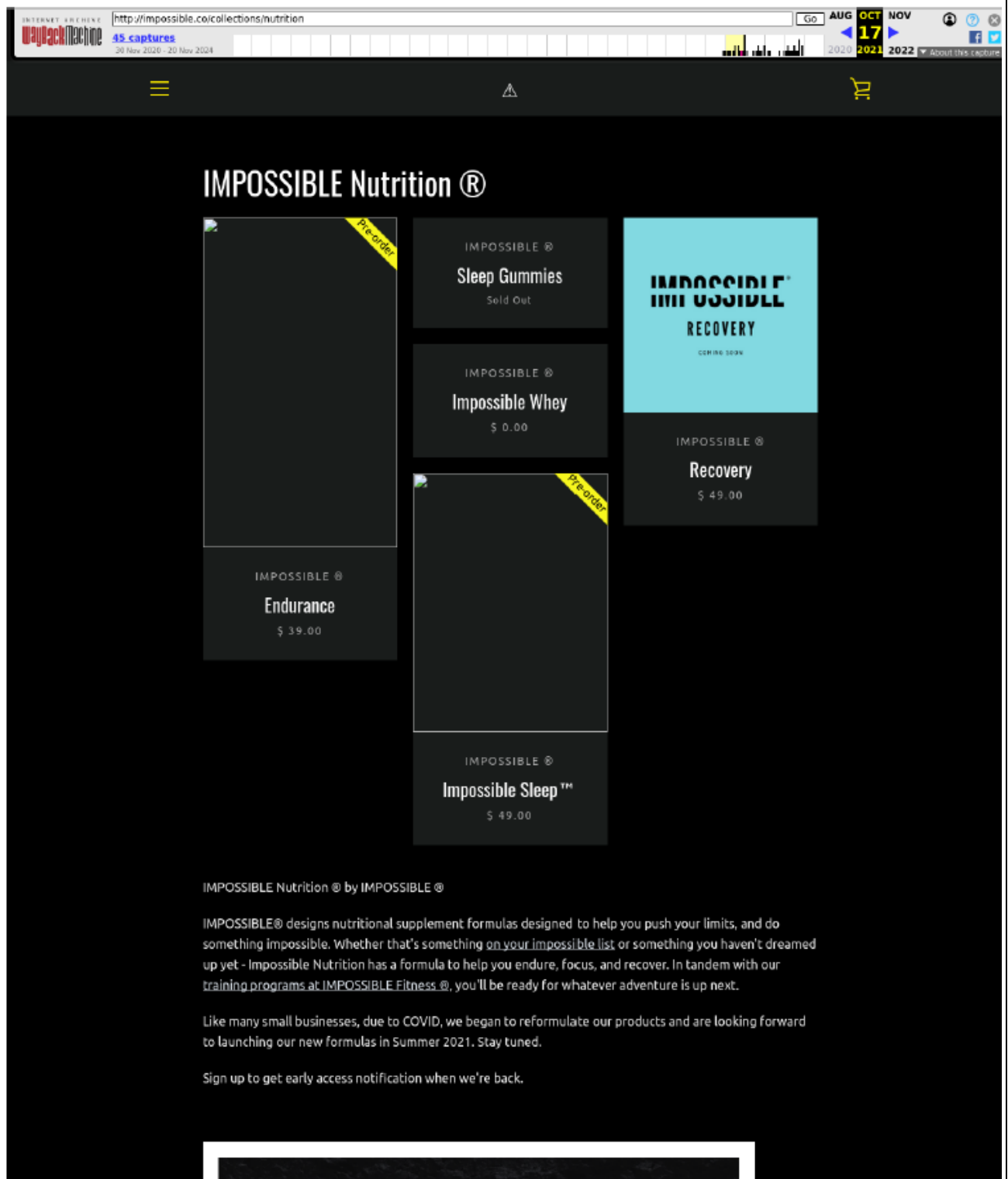


Confidential

IMP00004195

See Exhibit K.

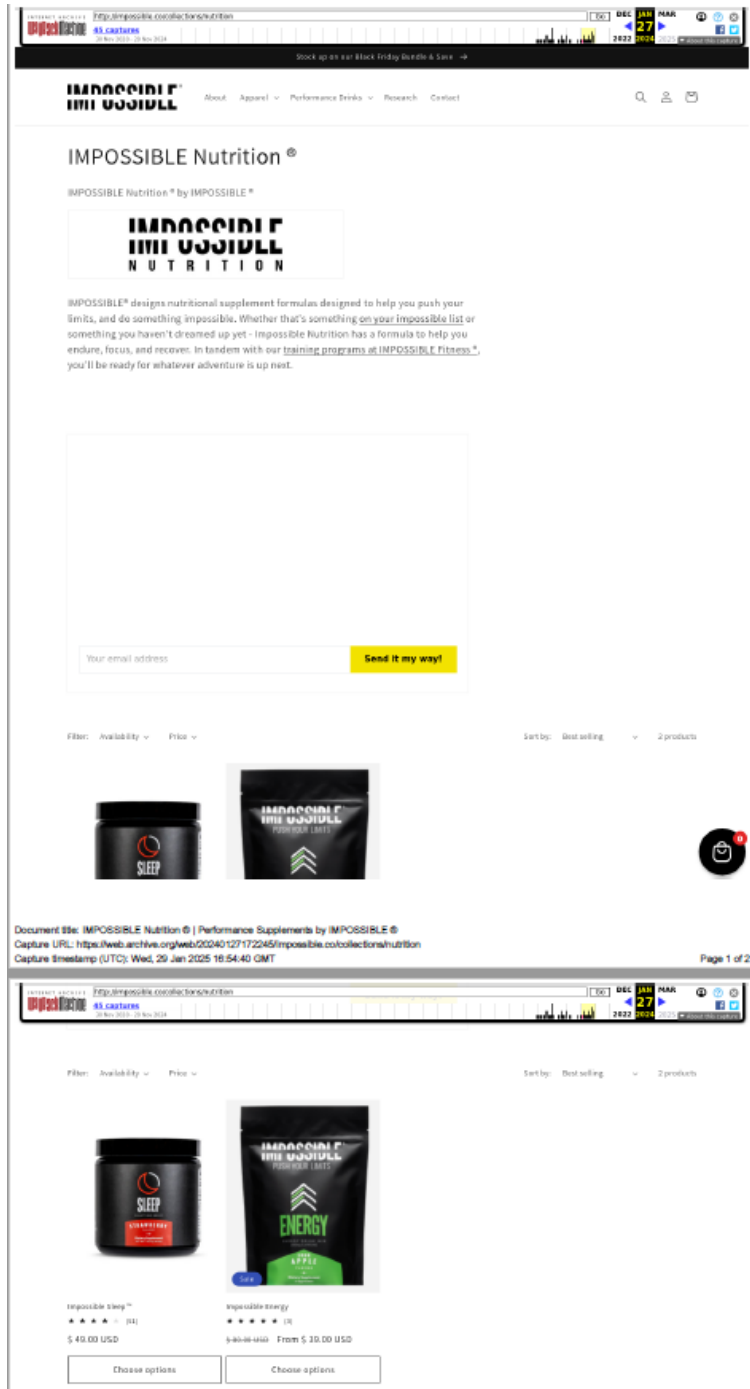
50. By October 17, 2021, ILLC's nutritional supplements bearing the IMPOSSIBLE NUTRITION Design Mark were no longer available for purchase on Defendants' website:



See Exhibit L at 1.

1 51. On January 23, 2023, the USPTO issued a reminder to ILLC to submit a Section 8
2 Declaration of Use and/or Excusable Neglect by January 23, 2024, with an option to file a Section
3 15 Declaration to “claim the benefits of incontestability.” *See* Exhibit M.

4 52. Only after the USPTO’s Section 8 reminder did ILLC resume using the
5 IMPOSSIBLE NUTRITION Design Mark on their website in connection with nutritional
6 supplements:



See Exhibit N.

53. On July 12, 2024, with this litigation pending and with actual notice of Impossible Foods's intent to amend its pleading to assert trademark infringement claims, ILLC, at the direction of Mr. Runyon, submitted a combined Section 8 and Section 15 declaration for the

1 IMPOSSIBLE NUTRITION Design Mark attesting that “the mark has been continuously used in
2 commerce for five (5) consecutive years after the date of registration.” *See* Exhibit O at 5.

3 54. Because ILLC had not used the IMPOSSIBLE NUTRITION Design Mark in
4 connection with nutritional supplements between October 2021 and December 2023, ILLC’s
5 attestation in the Section 8 and Section 15 declaration that “the mark has been continuously used
6 in commerce for five (5) consecutive years” was knowingly false.

7 55. On information and belief, the PTO relied upon ILLC’s false statement in accepting
8 the combined Section 8 and Section 15 declaration and would not have accepted the declaration if
9 it knew that the statement was false—reliance intended by ILLC.

10 **Defendants’ Lack of Use of the IMPOSSIBLE FITNESS Design Mark Covering Class 25**

11 56. On August 3, 2016, XLLC, at the direction of Mr. Runyon, the sole owner and
12 operator of ILLC and its predecessor XLLC, filed an intent-to-use application (Serial No.
13 87125862) for IMPOSSIBLE FITNESS & Design (“IMPOSSIBLE FITNESS Design Mark”) in
14 connection with “clothing” in Class 25. *See* Exhibit P.

15 **IMPOSSIBLE FITNESS**
16

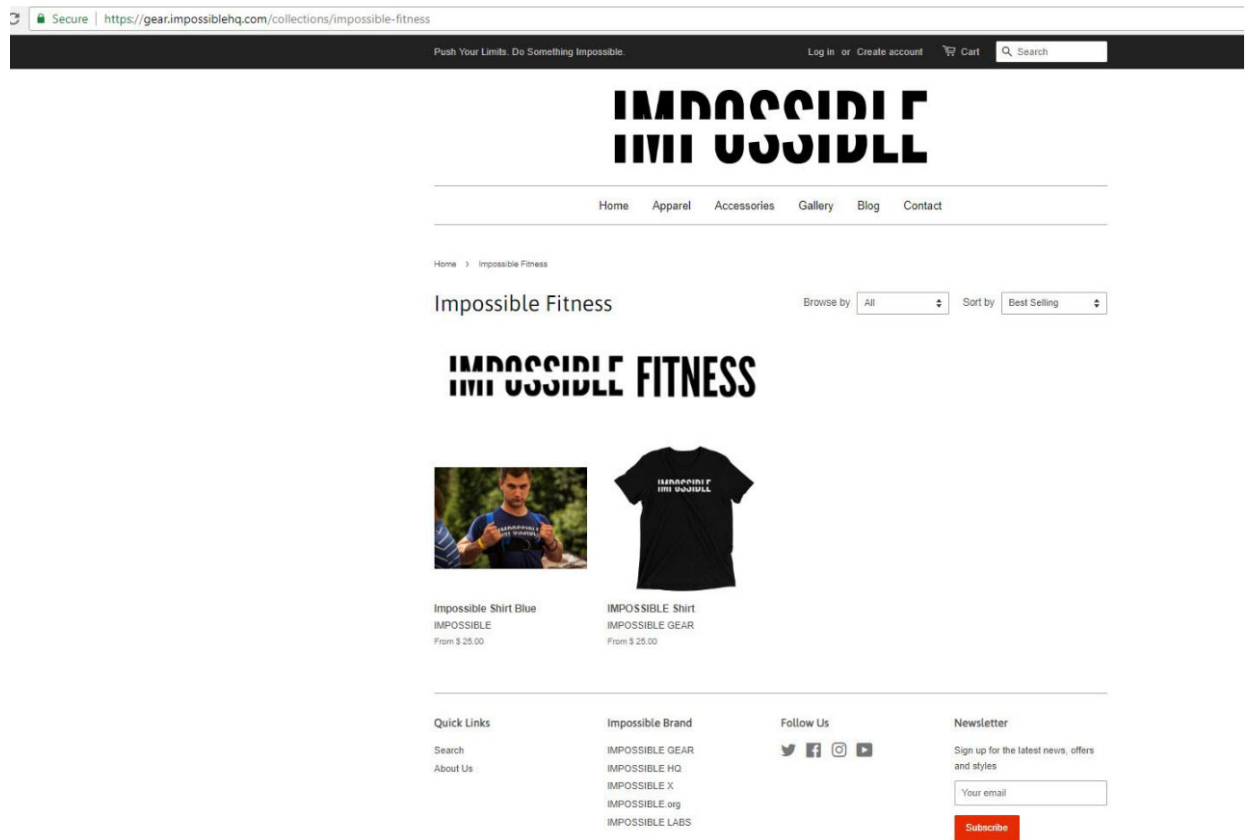
17 57. On December 14, 2016, the examining attorney filed an Examiner’s Amendment
18 amending the identification of the goods and services to: “Clothing and performance apparel,
19 namely, t-shirts, sweatshirts, pants, shorts, tank tops, yoga pants, tights, and underwear.” *See*
20 Exhibit Q.

21 58. On August 15, 2018, XLLC, at the direction of Mr. Runyon, filed a SOU in
22 connection with the application for the IMPOSSIBLE FITNESS Design Mark claiming a first-use
23 date of January 24, 2014. *See* Exhibit R at 1.

24 59. On information and belief, at the time XLLC filed the SOU in connection with the
25 IMPOSSIBLE FITNESS Design Mark, XLLC was not using and had never used the mark in
26 commerce in connection with “sweatshirts, pants, shorts, tank tops, yoga pants, tights, and
27

underwear.” Despite evidence of such use being requested in discovery, Defendants have not disclosed any evidence of such use.

60. The August 15, 2018 SOU for the application for the IMPOSSIBLE FITNESS Design Mark was accompanied by the following specimen:



See Exhibit S.

61. On October 23, 2018, the IMPOSSIBLE FITNESS Design Mark matured to registration, Registration No. 5590801. See Exhibit T.

62. On information and belief, at the time XLLC filed the SOU in connection with the IMPOSSIBLE FITNESS Design Mark, XLLC knew that it was not using and had never used the mark in commerce in connection with sweatshirts, pants, shorts, tank tops, yoga pants, tights, and underwear, making its declaration of such use false.

1 63. On information and belief, the PTO relied upon XLLC's false statement in issuing
2 Registration No. 5590801 and would not have issued the registration if it knew that the statement
3 was false—reliance intended by XLLC.

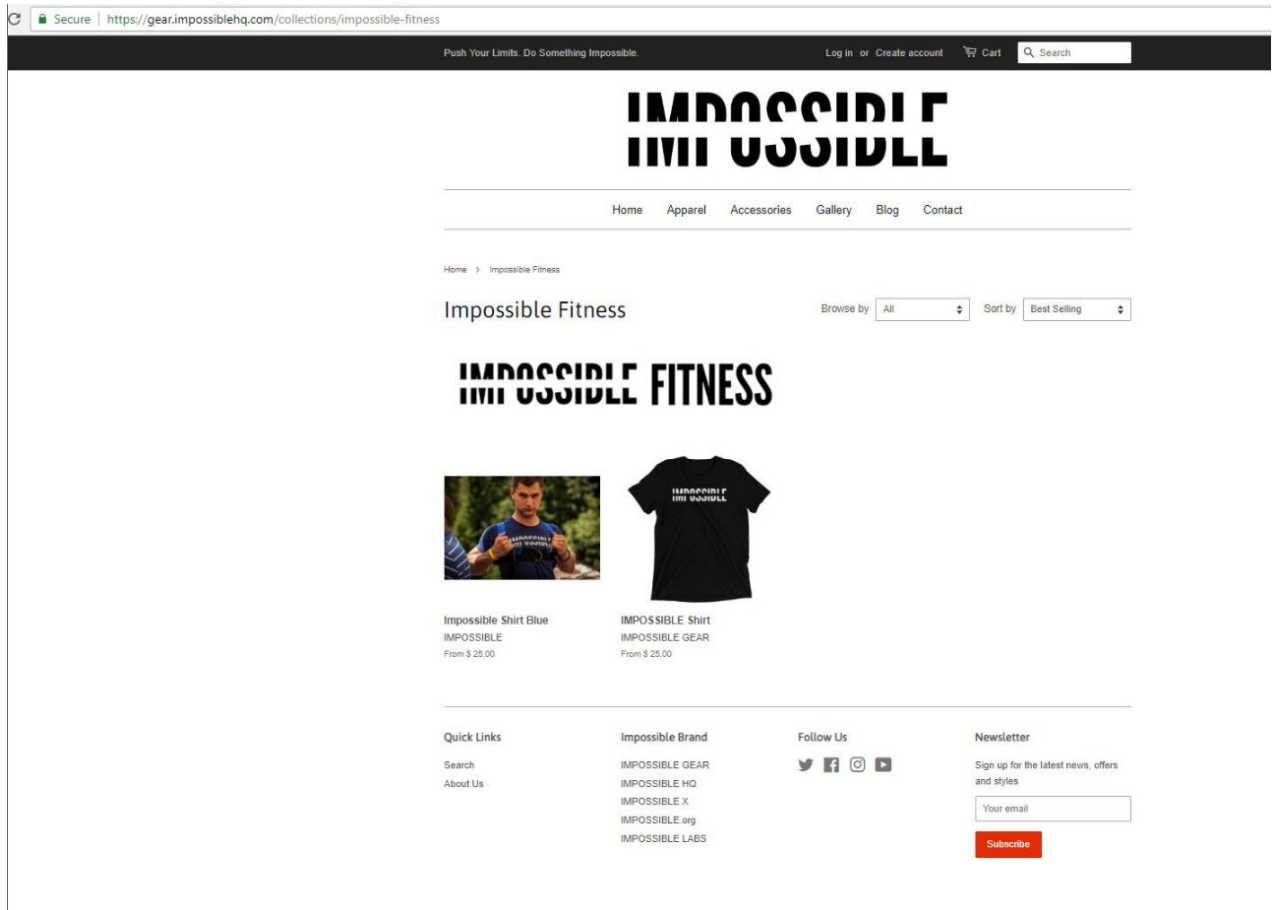
4 **Defendants' Lack of Use of the IMPOSSIBLE FITNESS Word Mark Covering Class 25**

5 64. On November 16, 2017, XLLC, at the direction of Mr. Runyon, the sole owner and
6 operator of ILLC and its predecessor XLLC, filed an intent-to-use application (Serial No.
7 87687403) for IMPOSSIBLE FITNESS ("IMPOSSIBLE FITNESS Word Mark") in connection
8 with "[c]lothing and performance apparel, namely, t-shirts, sweatshirts, pants, shorts, tank tops,
9 yoga pants, tights, and underwear" in Class 25. *See* Exhibit U.

10 65. On August 15, 2018, XLLC, at the direction of Mr. Runyon, filed a SOU for the
11 application for the IMPOSSIBLE FITNESS Word Mark claiming a first-use date of January 24,
12 2014. *See* Exhibit V at 1.

13 66. On information and belief, at the time XLLC filed the SOU in connection with the
14 IMPOSSIBLE FITNESS Design Mark, XLLC was not using and had never used the mark in
15 commerce in connection with "sweatshirts, pants, shorts, tank tops, yoga pants, tights, and
16 underwear." Despite evidence of such use being requested in discovery, Defendants have not
17 disclosed any evidence of such use.

18 67. The August 15, 2018 SOU was accompanied by the same specimen submitted on
19 August 15, 2018, for the IMPOSSIBLE FITNESS Design Mark at Paragraph 60:
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See Exhibit W.

68. On November 6, 2018, the IMPOSSIBLE FITNESS Word Mark matured to registration, Registration No. 5603025. See Exhibit X.

69. On information and belief, at the time XLLC filed the SOU in connection with the IMPOSSIBLE FITNESS Word Mark, XLLC knew that it was not using and had never used the mark in commerce in connection with sweatshirts, pants, shorts, tank tops, yoga pants, tights, and underwear, making its declaration of such use false.

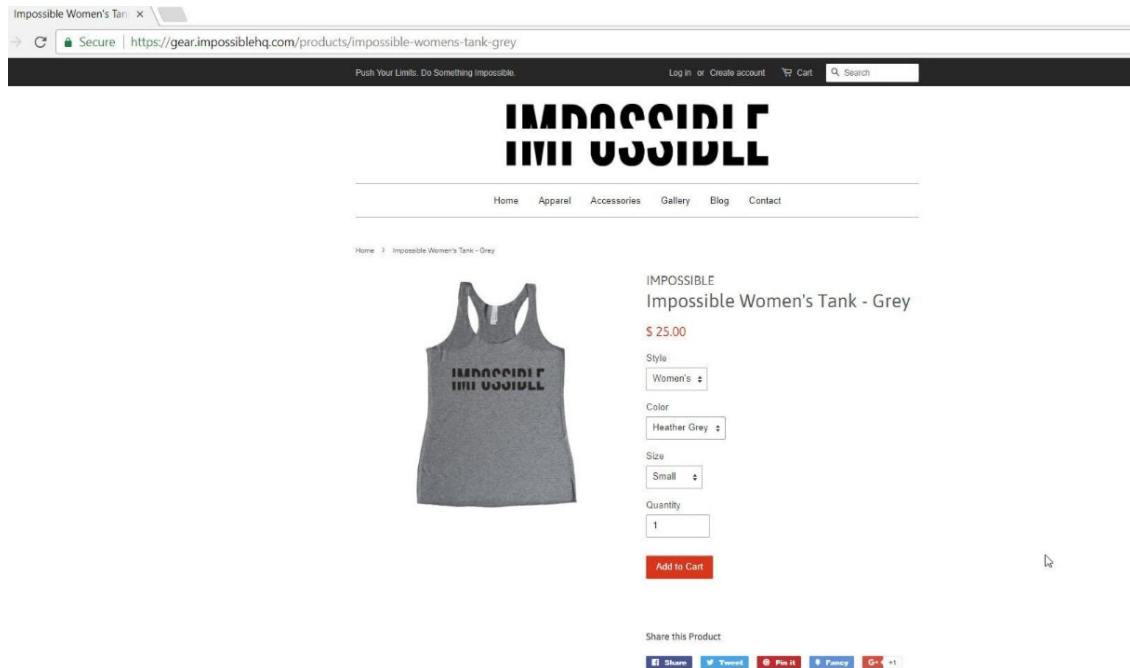
70. On information and belief, the PTO relied upon XLLC's false statement in issuing Registration No. 5603025 and would not have issued the registration if it knew that the statement was false—reliance intended by XLLC.

Defendants' Lack of Use of the IMPOSSIBLE Word Mark Covering Class 25

71. On January 15, 2018, XLLC, at the direction of Mr. Runyon, the sole owner and

operator of ILLC and its predecessor XLLC, filed a use-based application (Serial No. 87755108) for IMPOSSIBLE (“IMPOSSIBLE Word Mark”), in which XLLC stated to the USPTO that the IMPOSSIBLE Word Mark was currently in use in commerce in connection with, *inter alia*, “clothing and performance apparel, namely, t-shirts, sweatshirts, pants, shorts, tank tops [sic], yoga pants, tights and underwear” in Class 25 and claimed that the date of first use was “[a]t least as early as” September 9, 2011. *See* Exhibit Y.

72. The application for the IMPOSSIBLE Word Mark also included the following specimen:

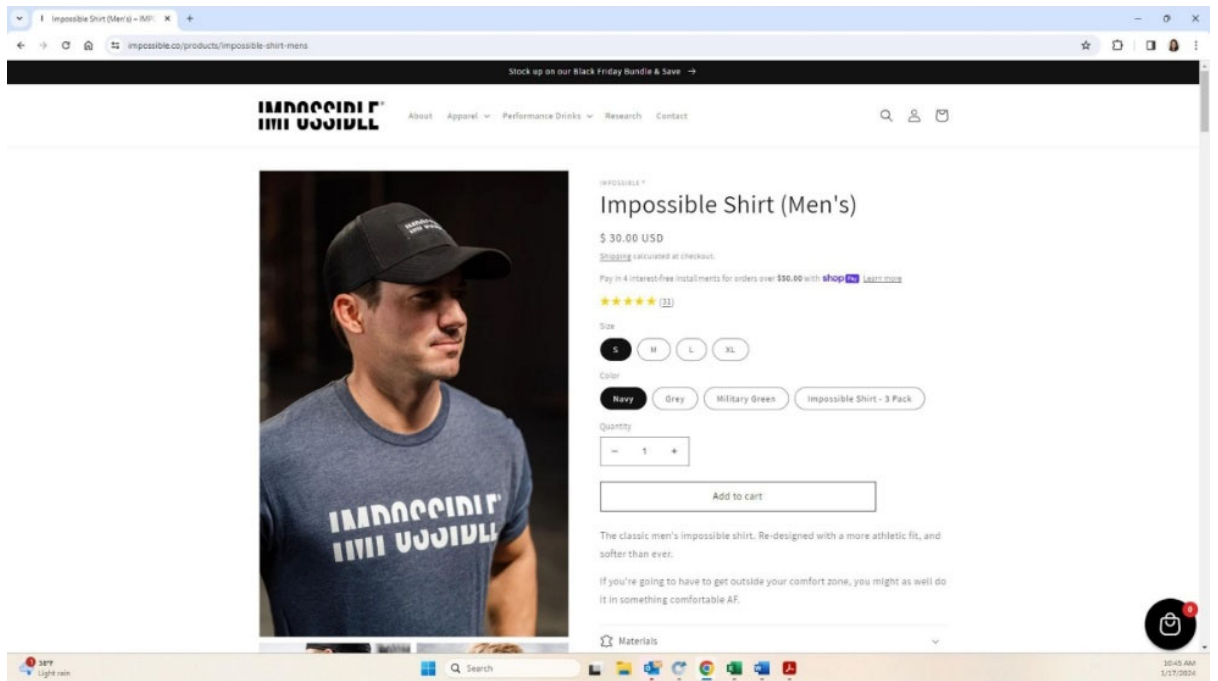


See Exhibit Z at 2.

73. On January 18, 2024, ILLC, at the direction of Mr. Runyon, submitted a Section 8 Declaration of Use in connection with the application for the IMPOSSIBLE Word Mark asserting, for the Class 25 goods, “[c]lothing and performance apparel, namely, t-shirts, sweatshirts, pants, shorts, tank tops, yoga pants, tights and underwear,” that “the mark is in use in commerce on or in connection with **all** goods/services” (emphasis in original). *See* Exhibit AA at 2, 5.

74. On January 18, 2024, ILLC, at the direction of Mr. Runyon, submitted the following specimen for the IMPOSSIBLE Word Mark application:

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See Exhibit BB at 2.

75. On February 3, 2024, a trademark examining attorney issued an office action to the application for the IMPOSSIBLE Word Mark “randomly select[ing] [Registration No. 5620625] for audit to determine whether the mark is in use with all of the goods and/or services identified in the affidavit or declaration of use submitted to maintain the registration” requiring ILLC to either (1) submit proof of use for “[c]lothing and performance apparel, namely, tank tops” and “underwear” or (2) delete the audited goods. See Exhibit CC at 2-3.

76. On December 4, 2024, ILLC, at the direction of Mr. Runyon, responded to the February 3, 2024 office action for the IMPOSSIBLE Word Mark, deleting “sweatshirts,” “pants,” “shorts,” “yoga pants,” “tights,” and “underwear” from the identification of the goods. See Exhibit DD at 1.

77. On December 4, 2024, ILLC, at the direction of Mr. Runyon, also submitted specimens showing the IMPOSSIBLE Word Mark in connection with a t-shirt and a tank top. See Exhibit EE.

1 78. On information and belief, at the time that XLLC filed the use-based application in
2 connection with the IMPOSSIBLE Word Mark, XLLC was not using and had never used the mark
3 in connection with pants, shorts, yoga pants, tights, and underwear. Despite evidence of such use
4 being requested in discovery, Defendants have not disclosed any evidence of such use.

5 79. On December 4, 2018, the IMPOSSIBLE Word Mark matured to registration,
6 Registration No. 5620625. *See* Exhibit FF.

7 80. On information and belief, at the time that XLLC filed the use-based application in
8 connection with the IMPOSSIBLE Word Mark, XLLC knew that it was not using and had never
9 used the mark in commerce in connection with pants, shorts, yoga pants, tights, and underwear,
10 making its declaration of such use false.

11 81. On information and belief, the PTO relied upon XLLC's false statement in issuing
12 Registration No. 5620625 and would not have issued the registration if it knew that the statement
13 was false—reliance intended by XLLC.

14 **Defendants' Lack of Use of the IMPOSSIBLE Motion Mark Covering Class 25**

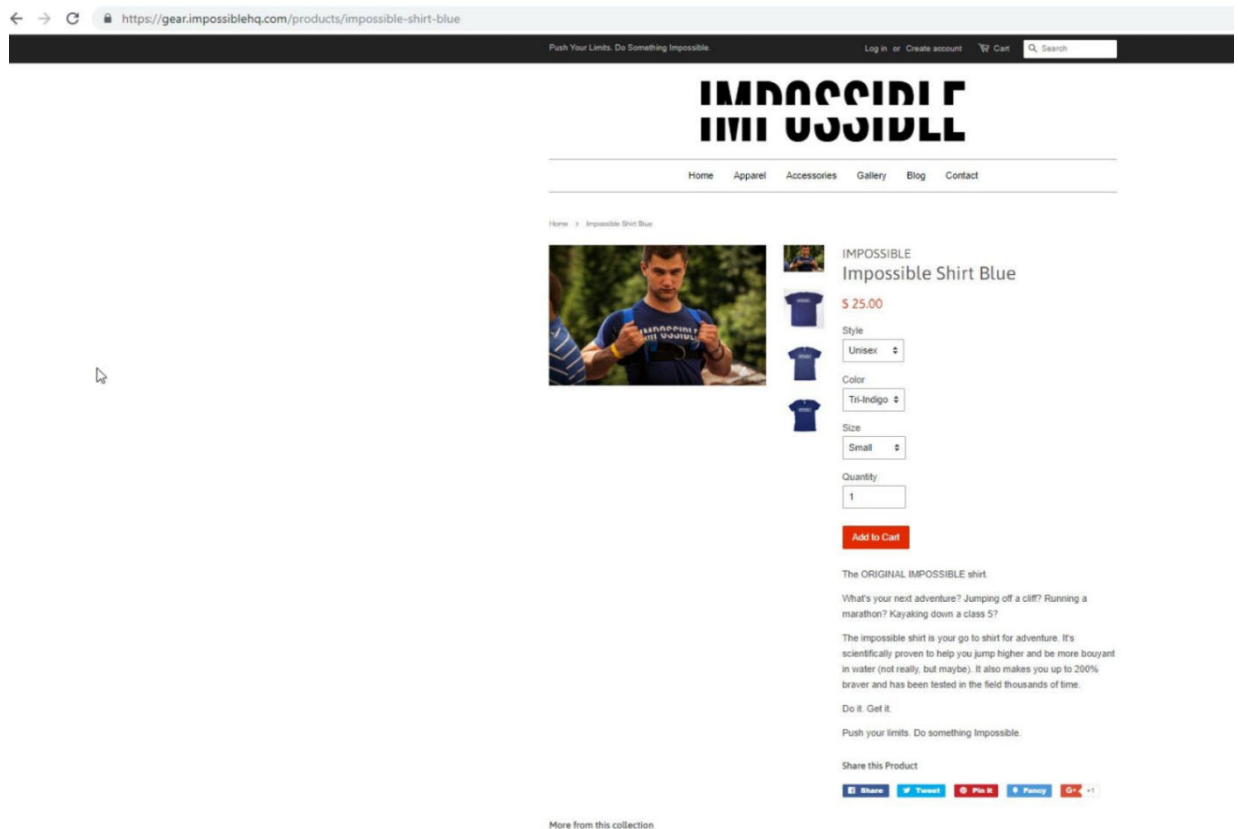
15 82. On April 19, 2018, XLLC, at the direction of Mr. Runyon, the sole owner and
16 operator of ILLC and its predecessor XLLC, filed a use-based application (Serial No. 87884481)
17 for IMPOSSIBLE ("IMPOSSIBLE Motion Mark"), in which XLLC stated to the USPTO that the
18 IMPOSSIBLE Motion Mark was currently in use in commerce in connection with, *inter alia*,
19 "clothing and performance apparel, namely, t-shirts, sweatshirts, pants, shorts, tank tops [sic], yoga
20 pants, tights and underwear" in Class 25 and claimed that the date of first use was "[a]t least as
21 early as" May 29, 2012. *See* Exhibit GG.



83. The application for the IMPOSSIBLE Motion Mark also included a specimen, which is a video that shows the IMPOSSIBLE Motion Mark at the beginning of the video and then a person appearing to advertise a shirt with the static IMPOSSIBLE mark on it. *See* <https://tsdr.uspto.gov/documentviewer?caseId=sn87884481&docId=SPE20180419160610&linkId=22#docIndex=21&page=1>; Exhibit HH.

84. On November 12, 2018, the trademark examiner issued an office action to the application for the IMPOSSIBLE Motion Mark, refusing registration because the specimen submitted in connection with the Class 25 goods was “mere advertising material” and requesting that Defendants either submit a new and sufficient specimen evidencing use in commerce or amend the application to an intent-to-use basis. *See* Exhibit II at 2.

85. On May 10, 2019, XLLC, at the direction of Mr. Runyon, responded to the November 12, 2018 office action for the IMPOSSIBLE Motion Mark application and submitted the following alternative specimen:



1 See Exhibit JJ at 6; Exhibit KK.

2 86. On January 22, 2020, the trademark examiner issued another office action refusing
3 registration of the IMPOSSIBLE Motion Mark “because the webpage specimen in International
4 Class 25 [was] not an acceptable display associated with the goods and appear[ed] to be mere
5 advertising material.” See Exhibit LL at 2.

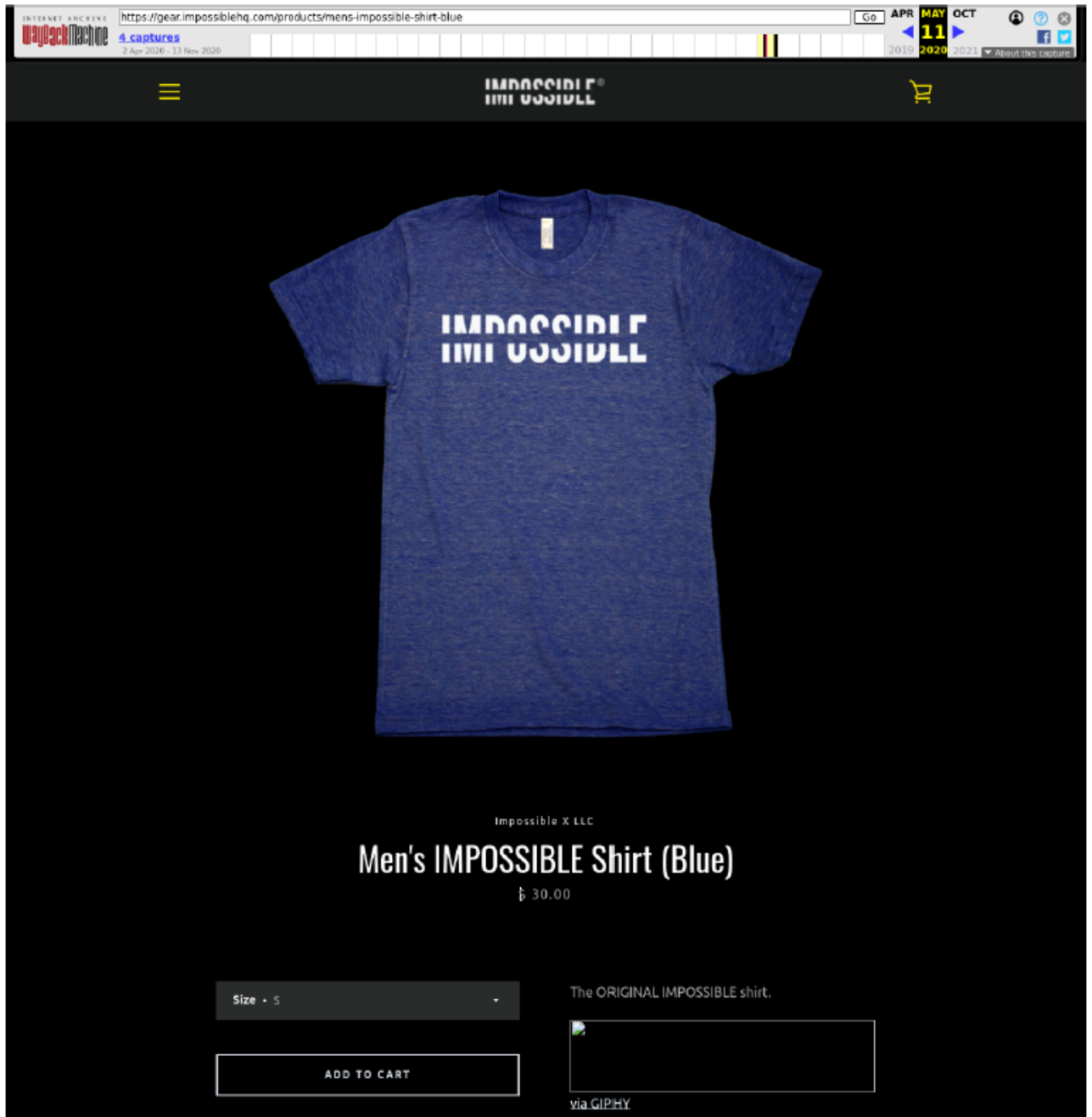
6 87. On May 11, 2020, XLLC, at the direction of Mr. Runyon, submitted another
7 specimen, which is a video recording of a webpage displaying the IMPOSSIBLE Motion Mark
8 next to a t-shirt appearing to be offered for sale. See
9 <https://tsdr.uspto.gov/documentviewer?caseId=sn87884481&docId=SPE20200511122033&linkId=12#docIndex=11&page=1>; Exhibit MM.

11 88. On September 28, 2020, the trademark examiner issued another office action
12 rejecting the specimen for “appear[ing] to be in the nature of a digital mockup that fail[ed] to show
13 the applied-for mark in actual use in commerce.” See Exhibit NN at 2.

14 89. On October 20, 2020, XLLC, at the direction of Mr. Runyon, responded to the
15 September 28, 2020 office action for the IMPOSSIBLE Motion Mark and submitted another new
16 specimen in connection with the application: a video recording of a webpage displaying the
17 IMPOSSIBLE Motion Mark next to a t-shirt being offered for sale. See
18 <https://tsdr.uspto.gov/documentviewer?caseId=sn87884481&docId=SPE20201020190019&linkId=8>; Exhibits OO-PP.

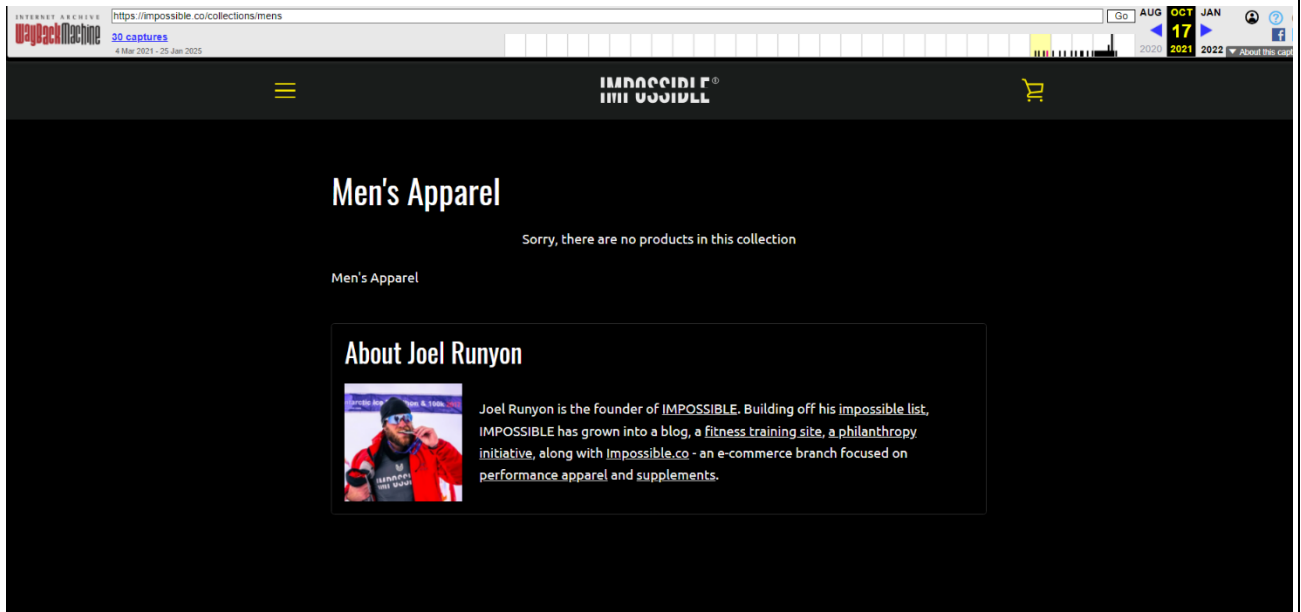
20 90. Until May 2020, archived webpages reveal no use of the IMPOSSIBLE Motion
21 Mark in connection with any of the Class 25 goods, “clothing and performance apparel, namely, t-
22 shirts, sweatshirts, pants, shorts, tank tops, yoga pants, tights and underwear,” listed in the
23 identification.

24 91. After May 2020, the only good that XLLC offered in connection with the
25 IMPOSSIBLE Motion Mark was the “Men’s IMPOSSIBLE Shirt (Blue)” that was displayed in
26 the October 20, 2020 specimen. (The “via GIPHY” text indicates that the Motion Mark is there.)
27



See Exhibit QQ.

92. At least as of October 2021, archived webpages reveal that the IMPOSSIBLE Motion Mark appears nowhere on ILLC's website in connection with any of the Class 25 goods, "clothing and performance apparel, namely, t-shirts, sweatshirts, pants, shorts, tank tops, yoga pants, tights and underwear."



See Exhibit RR.

93. On information and belief, at the time XLLC filed the use-based application for the IMPOSSIBLE Motion Mark, XLLC was not using and had never used the mark in connection “clothing and performance apparel, namely, t-shirts, sweatshirts, pants, shorts, tank tips, yoga pants, tights and underwear.” Despite evidence of such use being requested in discovery, Defendants have not disclosed any evidence of such use.

94. On November 30, 2021, the IMPOSSIBLE Motion Mark matured to registration, Registration No. 6571603. *See* Exhibit SS.

95. On information and belief, as of the date XLLC filed the used-based application in connection with the IMPOSSIBLE Motion Mark, XLLC knew that it was not using and had never used the mark in commerce in connection with “clothing and performance apparel, namely, t-shirts, sweatshirts, pants, shorts, tank tips, yoga pants, tights and underwear,” making its declaration of such use false.

96. On information and belief, the PTO relied upon XLLC’s false statement in issuing Registration No. 6571603 and would not have issued the registration if it knew that the statement was false—reliance intended by XLLC.

1 **FIRST CLAIM FOR RELIEF**

2 **(Declaratory Relief)**

3 97. Impossible Foods realleges and incorporates by reference the allegations of the
4 preceding paragraphs.

5 98. As a result of the actions and statements of ILLC, which include allegations of
6 trademark infringement and challenges to Impossible Foods's commercial use and registration of
7 its IMPOSSIBLE marks in connection with recipes, food ingredients, and cooking information,
8 there is an actual controversy between Impossible Foods and ILLC as to the parties' rights and as
9 to the legal relations associated with each party's use of IMPOSSIBLE-formative marks. An
10 immediate, real, and substantial controversy exists between the parties, who have adverse legal
11 interests.

12 99. Impossible Foods has used and intends to continue to use its IMPOSSIBLE marks
13 in interstate commerce.

14 100. Company Defendant's position is that Impossible Foods has made use of
15 IMPOSSIBLE-formative marks in a manner justifying ILLC and its predecessors to sue
16 Impossible Foods immediately for trademark infringement and other legal violations.

17 101. Impossible Foods's use of its IMPOSSIBLE-formative marks in connection with
18 recipes, food ingredients, and cooking information, does not infringe or dilute any of ILLC's valid
19 trademark rights and does not violate any federal or state trademark, trade name, or related law.

20 102. A judicial determination is necessary and appropriate at this time to resolve the
21 foregoing issues, and for the parties to ascertain their respective rights and obligations as to the
22 IMPOSSIBLE-formative marks at issue.

23 103. Impossible Foods does not engage in any activities that harm or threaten any lawful
24 rights of ILLC and is entitled to a declaration to that effect in this action.

25 **SECOND CLAIM FOR RELIEF**

26 **(Federal Trademark Infringement)**

27 104. Impossible Foods realleges and incorporates by reference the allegations of the
28 preceding paragraphs.

105. Impossible Foods is the record owner of Plaintiff's Registrations and has exclusive registered and common-law rights in Plaintiff's Marks.

106. Defendants' unauthorized use, at the direction of Mr. Runyon, of imitations of Plaintiff's Marks in connection with edible products such as sleep and energy powders is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendants' goods and services are offered by Impossible Foods, or are associated or connected with Impossible Foods, or have the sponsorship, endorsement, or approval of Impossible Foods.

107. Defendants' conduct, at the direction of Mr. Runyon, has caused—and unless enjoined by the Court, will continue to cause—a likelihood of confusion and deception among members of the trade and public, and injury to Impossible Foods's goodwill and reputation as symbolized by Plaintiff's Marks, for which Impossible Foods has no adequate remedy at law.

108. Defendants' conduct, at the direction of Mr. Runyon, demonstrates a willful intent to trade on the goodwill associated with Plaintiff's Marks to Impossible Foods's great and irreparable harm.

109. Impossible Foods is thus entitled to permanent injunctive relief and to recover Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, and 1117.

THIRD CLAIM FOR RELIEF

(Federal Unfair Competition)

110. Impossible Foods realleges and incorporates by reference the allegations of the preceding paragraphs.

111. Impossible Foods owns extensive and exclusive common-law rights in Plaintiff's Marks.

112. Defendants' unauthorized use, at the direction of Mr. Runyon, of imitations of Plaintiff's Marks in connection with edible products such as energy and sleep powders is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendants' goods and services are offered by Impossible Foods, or are associated or connected

1 with Impossible Foods, or have the sponsorship, endorsement, or approval of Impossible Foods.

2 113. Defendants' conduct, at the direction of Mr. Runyon, has caused—and unless
3 enjoined by the Court, will continue to cause—a likelihood of confusion and deception among
4 members of the trade and public, and injury to Impossible Foods's goodwill and reputation as
5 symbolized by Plaintiff's Marks, for which Impossible Foods has no adequate remedy at law.

6 114. Defendants' conduct, at the direction of Mr. Runyon, demonstrates a willful intent
7 to trade on the goodwill associated with Plaintiff's Marks to Impossible Foods's great and
8 irreparable harm.

9 115. Impossible Foods is thus entitled to permanent injunctive relief and to recover
10 Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable
11 attorneys' fees under 15 U.S.C. §§ 1125(a), 1116, and 1117.

12 **FOURTH CLAIM FOR RELIEF**

13 (California Common Law Unfair Competition)

14 116. Impossible Foods realleges and incorporates by reference the allegations of the
15 preceding paragraphs.

16 117. Impossible Foods owns extensive and exclusive common-law rights in Plaintiff's
17 Marks.

18 118. Defendants' unauthorized use, at the direction of Mr. Runyon, of imitations of
19 Plaintiff's Marks in connection with edible products such as energy and sleep powders is likely to
20 cause confusion, deception, and mistake by creating the false and misleading impression that
21 Defendants' goods and services are offered by Impossible Foods, or are associated or connected
22 with Impossible Foods, or have the sponsorship, endorsement, or approval of Impossible Foods.

23 119. Defendants' conduct, at the direction of Mr. Runyon, has caused—and unless
24 enjoined by the Court, will continue to cause—a likelihood of confusion and deception among
25 members of the trade and public, and injury to Impossible Foods's goodwill and reputation as
26 symbolized by Plaintiff's Marks, for which Impossible Foods has no adequate remedy at law.

27 120. Defendants' conduct, at the direction of Mr. Runyon, demonstrates a willful intent

1 to trade on the goodwill associated with Plaintiff's Marks to Impossible Foods's great and
2 irreparable harm.

3 121. Impossible Foods is therefore entitled to injunctive relief and to recover actual
4 damages, attorneys' fees, and punitive damages to the full extent provided for by the common law
5 of the State of California.

6 **FIFTH CLAIM FOR RELIEF**

7 (Section 15 Fraud in the Procurement of the Incontestability Status of Trademark Reg. No.
8 5387588)

9 122. Impossible Foods realleges and incorporates by reference the allegations of the
10 preceding paragraphs.

11 123. Pursuant to 15 U.S.C. § 1064(3), a federal trademark registration may be canceled
12 "at any time" upon a showing that a registration was procured or maintained via fraud upon the
13 United States Patent and Trademark Office.

14 124. On July 12, 2024, during the pendency of the instant action, ILLC, at the direction
15 of Mr. Runyon, submitted a Section 15 declaration for the IMPOSSIBLE NUTRITION Design
16 Mark attesting that "the mark has been continuously used in commerce for five (5) consecutive
17 years after the date of registration, or the date of publication."

18 125. ILLC's attestation, at the direction of Mr. Runyon, as to five years of continuous
19 use is false because, on information and belief, Defendants did not offer any nutritional
20 supplements in connection with the IMPOSSIBLE NUTRITION Design Mark between October
21 2021 and December 2023 and only began offering nutritional supplements bearing the
22 IMPOSSIBLE NUTRITION Design Mark again after receiving the Section 8 Reminder from the
23 USPTO.

24 126. Defendants knew that the statement regarding continuous use in the Section 15
25 declaration was false because Defendants intentionally and specifically ceased selling products in
26 connection with the IMPOSSIBLE NUTRITION Design Mark in October 2021, removing
27

1 nutritional supplements from their website and requesting that the third-party seller remove the
2 product from the third party's website.

3 127. In reliance on Defendants' false sworn statement, the USPTO issued an erroneous
4 "Notice of Acknowledgment" of the "incontestable" status of Registration No. 5387588.

5 128. Defendants' actions to procure incontestability status for the IMPOSSIBLE
6 NUTRITION Design Mark constitutes fraud on the USPTO.

7 129. The inclusion of false statements in a Section 15 affidavit/declaration is material,
8 and here constituted fraud on the USPTO warranting cancellation of the registrations under
9 Section 14(3) of the Trademark Act.

10 130. By virtue of ownership of Registration No. 5387588 and the incontestability status
11 procured by fraud, Defendants assert the IMPOSSIBLE NUTRITION Design Mark against
12 Impossible Foods in an opposition before the Trademark Trial & Appeal Board for application
13 Serial No. 88855875 and in this present action, disrupting Impossible Foods's United States
14 business operations and causing great and irreparable harm to Impossible Foods.

15 131. Accordingly, the Court should issue an order cancelling the IMPOSSIBLE
16 NUTRITION Design Mark, Registration No. 5387588.

17 **SIXTH CLAIM FOR RELIEF**

18 (Fraud in the Procurement - Cancellation of Trademark Reg. Nos. 5590801, 5603025, 5620625,
19 and 6571603¹)

20 132. Impossible Foods realleges and incorporates by reference the allegations of the
21 preceding paragraphs.

22 133. Pursuant to 15 U.S.C. § 1064(3), a federal trademark registration may be canceled
23 "at any time" upon a showing that a registration was procured or maintained via fraud upon the
24 United States Patent and Trademark Office.

25 134. The USPTO reasonably relied on the false statements in the applications or SOUs
26 in granting registration status to the Void Marks.

27
28 ¹ Reg. Nos. 5590801, 5603025, 5620625, and 6571603 collectively referred to hereinafter as the "Void Marks."
THIRD AMENDED COMPLAINT
CASE NO. 5:21-CV-02419-BLF (SVK)

1 135. The USPTO would not have granted registration status to the Void Marks but for
2 the false statements in the applications or SOUs.

3 136. Upon information and belief, Defendants and their predecessors knew that the
4 statements regarding its actual and bona fide use of the Void Marks in commerce in connection
5 with some of the goods identified in the applications or SOUs were false.

6 137. In view of the foregoing, Defendants' and their predecessors' statements in the
7 applications or SOUs submitted in connection with the applications for the Void Marks that the
8 marks were in use in commerce in connection with the stated goods as evidenced by the attached
9 specimens were knowing, material, and false representations to the USPTO made with the intent
10 to deceive the USPTO.

11 138. Upon information and belief, Defendants and their predecessors committed fraud
12 on the USPTO in connection with securing and maintaining the Void Marks because, through
13 Defendants' and their predecessors' authorized representative, Defendants and their predecessors
14 knowingly made false, material representations of fact in the applications and ITU or SOU
15 declarations, submitted with the intent to deceive the USPTO into granting the registrations for
16 goods for which Defendants had no actual or bona fide use or intent to use the marks.

17 139. Accordingly, the actions of Defendants and their predecessors in the procurement
18 of registration status constitute fraud on the USPTO.

19 140. By virtue of ownership of the Void Marks procured by fraud, Defendants assert the
20 Void Marks against Impossible Foods in an opposition before the Trademark Trial & Appeal
21 Board for application Serial No. 88855875 and in this present action, disrupting Impossible
22 Foods's United States business operations and causing great and irreparable harm to Impossible
23 Foods.

24 141. Accordingly, the Court should issue an order cancelling the Void Marks on the
25 basis of fraud.

1 **SEVENTH CLAIM FOR RELIEF**

2 (Abandonment - Cancellation of Trademark Reg. No. 5590801, 5603025, and 6571603²)

3 142. Impossible Foods realleges and incorporates by reference the allegations of the
4 preceding paragraphs.

5 143. According to 15 U.S.C. § 1127, “Nonuse for 3 consecutive years shall be prima
6 facie evidence of abandonment.”

7 144. On information and belief, as to Registration Nos. 5590801 and 5603025, during a
8 period of at least three years after the date of the SOUs, the marks were not used in commerce on
9 or in connection with any of the identified goods.

10 145. On information and belief, as to Registration No. 6571603, the mark was not used
11 in commerce on or in connection with any of the identified goods for a period of at least three
12 years since at least October 2021.

13 146. On information and belief, Defendants are not making bona fide use in the ordinary
14 course of trade of the Abandoned Marks in connection with the goods recited in the registrations.

15 147. On information and belief, Defendants have not made bona fide use in the ordinary
16 course of trade of the Abandoned Marks in connection with the goods recited in the registrations
17 for at least three consecutive years.

18 148. By virtue of ownership, Defendants assert the Abandoned Marks against
19 Impossible Foods in an opposition before the Trademark Trial & Appeal Board for application
20 Serial No. 88855875 and in this present action, disrupting Impossible Foods’s United States
21 business operations and causing great and irreparable harm to Impossible Foods.

22 149. As such, Defendants’ lack of bona fide use in commerce and abandonment for the
23 identified goods is grounds for cancellation under 15 U.S.C. § 1064 and the Abandoned Marks
24 should be cancelled.

25 **PRAYER FOR RELIEF**

26 Impossible Foods prays for judgment as follows:

27
28

² Reg. Nos. 5590801, 5603025, and 6571603 collectively referred to hereinafter as the “Abandoned Marks.”
THIRD AMENDED COMPLAINT
CASE NO. 5:21-CV-02419-BLF (SVK)

1 (a) That this Court declare that Impossible Foods's use and registration of its
2 IMPOSSIBLE-formative marks with services relating to recipes, food ingredients, and cooking
3 information do not infringe upon, dilute, or otherwise violate any valid right of ILLC under
4 applicable federal or state law;

5 (b) That this Court declare that Impossible Foods is not liable to Company Defendant;

6 (c) That this Court order Defendants and their officers, affiliate companies, agents,
7 servants, employees, successors, licensees, and assigns, and all others in concert and privity with
8 them, be enjoined permanently from using any mark that is confusingly similar to any of
9 Plaintiff's Marks in connection with edible products and other related goods and services,
10 including sleep and energy powder;

11 (d) That this Court declare that Defendants' deceptive acts are willful;

12 (e) That this Court direct the Commissioner of Trademarks that the following
13 trademark registrations are to be canceled by the United States Patent and Trademark
14 Office:

15 i. U.S. Reg. 5387588
16 ii. U.S. Reg. 5590801
17 iii. U.S. Reg. 5603025
18 iv. U.S. Reg. 5620625
19 v. U.S. Reg. 6571603

20 (f) That Defendants be ordered to pay compensatory, punitive, and enhanced damages,
21 as well as Impossible Foods's attorneys' fees and costs, as demanded in the Claims set forth
22 above;

23 (g) That Defendants be ordered to pay prejudgment interest on the foregoing relief;

24 (h) That this Court award Impossible Foods its reasonable attorneys' fees and costs
25 under 15 U.S.C. § 1117(a); and

26 (i) That this Court grant such other and further relief as this Court may deem just and
27 proper.

1 DATED: March 7, 2025.

Respectfully submitted,

2 KILPATRICK TOWNSEND & STOCKTON LLP

3
4 By: /s/ H. Forrest Flemming, III

GIA L. CINCONI

5 R. CHARLES HENN JR.

6 H. FORREST FLEMMING, III

JESSICA W. TRUELOVE

7 Attorneys for Plaintiff

8
9
10 **DEMAND FOR JURY TRIAL**

11 Impossible Foods hereby demands trial by jury of all issues triable by a jury.

12
13 DATED: March 7, 2025.

Respectfully submitted,

14 KILPATRICK TOWNSEND & STOCKTON LLP

15
16 By: /s/ H. Forrest Flemming, III

R. CHARLES HENN JR.

17 GIA L. CINCONI

18 H. FORREST FLEMMING, III

JESSICA W. TRUELOVE

19 Attorneys for Plaintiff